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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Bell Operating Companies )

Petitions for Forbearance from the )  
Application of Section 272 of the )  
Communications Act of 1934, As )  
Amended, to Certain Activities )  
Defendant. )

CC Docket No. 96-149

**COMMENTS OF SBC COMMUNICATIONS INC.  
IN SUPPORT OF BELL SOUTH'S PETITION FOR RECONSIDERATION**

Pursuant to the Public Notice, DA 98-690, released on April 9, 1998, SBC Communications Inc. ("SBC") hereby submits, on behalf of itself and its subsidiaries, these comments in support of BellSouth's Petition for Reconsideration.

I. **THE NONDISCRIMINATION STANDARD IMPOSED WAS  
INAPPROPRIATE**

BellSouth correctly points out that the Bureau applied the inappropriate nondiscrimination standard in determining whether forbearance is required under section 10 of the Communications Act, as amended by the Telecommunications Act of 1996. Section 10 requires forbearance if the Commission determines, among other things, that it is not necessary to enforce the provision for which forbearance is requested to ensure that the carrier's charges, practices, classifications, or regulations are "not unjustly or unreasonably discriminatory." Consequently, if the Commission, or the Bureau acting for the Commission, determines that forbearance is permissible only if conditions are

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imposed, the conditions may go no further than to ensure that forbearance will not result in unjust or unreasonable discrimination. While the Bureau did state that its task was to consider whether a BOC's practice is unjustly or unreasonably discriminatory under the section 10 standard,<sup>1</sup> it in fact did not consider what minimum conditions are necessary to avoid unjust or unreasonable discrimination; instead it simply concluded that the "unqualified" nondiscrimination standard of section 272(c)(1), a much more stringent standard than an unjust or unreasonable standard, should be imposed.<sup>2</sup>

In its Non-Accounting Safeguards Order,<sup>3</sup> the Commission compared the nondiscrimination standard of section 272(c)(1) with that in section 202(a) (an unjust or unreasonable standard), and determined that the two standards are not the same. The Commission concluded that "because the text of the section 272(c)(1) nondiscrimination bar differs from the section 202(a) prohibition, ... Congress did not intend section 272's prohibition against discrimination ... to be synonymous with the 'unjust and unreasonable' discrimination language used in [section 202(a)]."<sup>4</sup> Yet the Bureau did just that – it made the two nondiscrimination standards synonymous. And it did so with no explanation of how or why doing so was necessary to prevent unjust or unreasonable discrimination. Because these two standards are so different, it is hard to see how the Bureau could ever justify equating the them, but at the very least, the Bureau must

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<sup>1</sup> *In the Matter of Bell Operating Companies, Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities* ("Forbearance Order"), CC Docket No. 96-149, 13 FCC Rcd 2627 ¶31 (1998).

<sup>2</sup> *Id.*

<sup>3</sup> *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, CC Docket No. 96-149, *First Report and Order and Further Notice of Proposed Rulemaking* ("Non-Accounting Safeguards Order"), 11 FCC Rcd. 21905 (1996).

<sup>4</sup> *Id.*, at ¶197.

explain how it reached its conclusion, including an explanation of why less onerous conditions would not satisfy the section 10 standard.

II. THE BUREAU DID NOT ADEQUATELY CONSIDER THE CONSEQUENCES OF THE STANDARD IT IMPOSED

In imposing a requirement that the BOCs must make their listings (and the listings of other LECS) used in the provision of E911 (and reverse directory) service available to third party providers of the service, the Bureau appears to have believed that this would be quite easy to accomplish, since they gave such a short time before the order became effective.

However, it will not be easy to comply with the Bureau's requirements. It is not a simple matter of "making the listings available". Computer systems must be modified to, for example, separate the listings information from other data, and to create a means for others to actually obtain the listings information. Agreements or tariffs covering the provision of the listings information, including appropriate terms and conditions and pricing, must be created. We must obtain permission from other LECs (ILECs and CLCs) to share their listings (see Attachment 1, a letter received by Pacific Bell from a California ILEC). We must determine how to "manage" this new listings product, and we have to determine the appropriate accounting changes as required by the Forbearance Order.

All of these activities take time and they cannot all be done at the same time -- some must follow others. For example, we cannot determine pricing until we determine costs, and we cannot determine costs until we determine how to make the listings available. How to make the listings available requires computer systems changes.

The Commission recognized, in its CPNI Order<sup>5</sup> that systems changes take time. In that order, the Commission required systems changes that it apparently believed were relatively simple and yet it gave telecommunications carriers eight months to complete the changes.<sup>6</sup> Yet here, we were given less than sixty days to accomplish everything that needs to be done.<sup>7</sup> The Bureau did not adequately consider the consequences of its requirements.

### III. E911 IS INTEGRAL TO PROVISION OF BOCS' SERVICE

The Bureau based its determination that section 10 required imposition of the section 272(c)(1) nondiscrimination standard on the idea that otherwise the BOCs would be required to provide E911 service through a separate affiliate. But this underlying rationale is flawed. As part of the checklist requirements in section 271, Congress required BOCs to provide nondiscriminatory access to 911 and E911 services.<sup>8</sup> This indicates that Congress expected and intended that E911 would continue to be provided by the BOCs. The Bureau's underlying rationale is inconsistent with this

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<sup>5</sup> *In the Matter of Implementation of the 1996 Act: Telecommunications Carriers Use of Customer Proprietary Network Information and Other Customer Information, and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, CC Docket Nos. 96-115, 96-149, *Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 98-27, Rel. Feb. 26, 1998.

<sup>6</sup> *Id.*, at ¶202.

<sup>7</sup> The Communications Act even recognizes that adequate lead-time is needed to implement certain types of requirements, including accounting changes. Section 220(g) mandates six months' "[n]otice of alternations by the Commission in the required manner or form of keeping accounts . . ." 47 U.S.C. §220(g). In this case, the Commission is requiring that "BOCs treat their E911 services as nonregulated activities for federal accounting purposes to the extent they involve storage and retrieval functions included within the statutory definition of information service." Forbearance Order ¶ 41(emphasis added). In effect, the Forbearance Order provides a new accounting treatment of the "nonregulated activities" as defined in Section 32.23 of the Uniform System of Accounts. This change in the manner in which BOCs are required to keep their records for federal accounting purposes should have been ordered on no less than six months' notice.

<sup>8</sup> 47 U.S.C. 271(c)(2)(B)(vii)(I).

Congressional view of E911 service. The checklist would not apply to an E911 service provided by a BOC section 272 separate affiliate, so the requisite "access to E911" would not be possible. Surely, if Congress had intended that section 272 should cause such disruption to the provision of E911 service, it would have stated so much more explicitly.

Furthermore, the Bureau's requirements will not benefit customers.

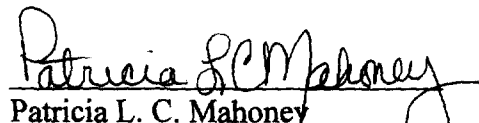
Provision of E911 will be more complex, and potentially more costly. And because the requirements are not imposed on all providers of E911 service, the BOCs may well be placed in a competitively disadvantaged position. They will be required to comply with demands from third parties for all listings in their possession but will not be able to make similar demands to assure that they have complete information. This could well cause the elimination of the most experienced providers from the E911 market.

#### IV. CONCLUSION

The Bureau should reconsider the Forbearance Order and forbear from all of the requirements of section 272, as requested and as the petitions demonstrated is appropriate. The Bureau should rely on Congress' judgment regarding what is necessary to make E911 available on a nondiscriminatory basis.

Respectfully submitted,

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April 7, 1998

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FTG-LEGAL

**Patricia L. Mahoney**  
**Senior Counsel**  
**Pacific Bell**  
140 New Montgomery St. - Room 1523  
San Francisco, CA 94105

Re: **E-911 Data Base Information**

Dear Ms. Mahoney:

I am writing to you on behalf of Sierra Telephone Company, Inc. ("Sierra") which has consulted with us concerning the impact of the FCC's recent order in CC Docket No. 96-149 ("FCC Order" or "Order") on the 1993 agreement between Pacific Bell ("Pacific") and Sierra entitled "Agreement For Use of E 9-1-1 Systems For E-911 Service" pursuant to which Sierra provides certain subscriber information to Pacific ("Agreement").

As you are aware, the FCC Order requires Pacific to provide to "... unaffiliated entities that wish to provide E911 services all subscriber listing information, including unlisted numbers, unpublished numbers and the numbers of other LEC's customers. . . ." We understand that Pacific is taking steps to comply with the Order. It is Sierra's position that the Agreement requires that Pacific negotiate with Sierra concerning the terms and conditions under which it will release any such information provided to Pacific by Sierra to another E911 data base provider.

We base our conclusion in this regard upon Section J of the Agreement entitled "Proprietary Information." Subsection J(a) provides that "... all information furnished by Sierra to Pacific pertaining to Sierra's customers shall be deemed to be proprietary information. . . ." Further, Subsection J(c) states that "each party shall keep all of the other party's proprietary information confidential and shall use the other party's proprietary information only for performing the covenants contained in the Agreement. Neither party shall use the other party's proprietary information for any other purpose except upon such terms and conditions as may be agreed upon between the parties in writing." Therefore, we conclude that Pacific Bell may not provide information to another E911 data base provider without Sierra's agreement as to the appropriate terms and conditions for such disclosure.

Patricia L. Mahoney  
April 7, 1998  
Page 2

In reaching this conclusion, we are aware that Subsection (d)(vii) provides for an exception to the obligations of confidentiality set forth in the Agreement if the information "... is required to be made public by the receiving party pursuant to applicable law or regulation provided that the receiving party shall give sufficient notice of the requirement to the disclosing party to enable the disclosing party to seek protective orders." Inasmuch as Pacific has not been ordered to make Sierra's proprietary information public, this exception is not applicable. In addition, Pacific would not be violating the FCC Order if it provided the subscriber listing information to another E911 provider under protective provisions similar to those contained in the Agreement. The FCC Order simply requires that Pacific make its information available at the same rates, terms and conditions that it charges or imposes on its own E911 service operations. Imposing upon another data base provider the same confidentiality provisions as are contained in the Agreement would not be inconsistent with the FCC Order in this respect.

Sierra is willing to enter into an amended agreement whereby Pacific could release information it obtains from Sierra to another E911 data base provider under conditions that would preserve its confidentiality. This would permit Pacific to both comply fully with the FCC Order and honor its contractual obligation to keep Sierra subscriber information confidential. However, if Pacific is unwilling to enter into such an agreement with Sierra, but releases Sierra's proprietary information, Sierra will consider Pacific to be in violation of the Agreement and will hold it responsible for any loss that such violation causes Sierra. Further, Sierra is not waiving any property or proprietary right in the data it provides pursuant to the Agreement, including but not limited to any possible claim by Sierra for compensation for any of its proprietary information that might be sold to a data base provider.

I would be pleased to discuss Sierra's position with your attorney if you wish.

Very truly yours,



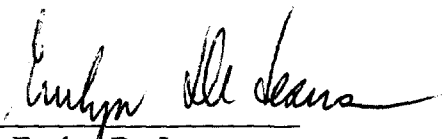
E. Garth Black

EGB:je

cc: Norine Lewis, Pacific Bell  
Linda Burton, Sierra Telephone Company, Inc.  
Alvin H. Pelavin  
Mark P. Schreiber

CERTIFICATE OF SERVICE

I, Evelyn De Jesus, hereby certify that on this 11<sup>th</sup> day of May, 1998 a true and correct copy of the foregoing "COMMENTS OF SBC COMMUNICATIONS INC. IN SUPPORT OF BELL SOUTH'S PETITION FOR RECONSIDERATION", was sent by United States first class mail, postage prepaid, to the parties on the attached list.

By:   
Evelyn De Jesus

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